

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MICHAEL E. SIMPSON**  
Claimant

VS.

**BELGER CARTAGE SERVICE, INC.**  
Respondent  
Self-Insured

)  
)  
)  
)  
)

Docket No. 202,518

**ORDER**

Claimant requests review of the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes entered in this proceeding on August 25, 1995.

**ISSUES**

The Administrative Law Judge denied claimant's request for benefits on the basis that claimant did not serve timely written claim. Claimant requested this review. Timely written claim is the only issue now before the Appeals Board.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds as follows:

- (1) The Appeals Board has the jurisdiction and authority to review preliminary hearing findings regarding timely written claim. See K.S.A. 44-534a.
- (2) The Preliminary Hearing Order of the Administrative Law Judge should be affirmed. K.S.A. 44-520a requires an injured worker to serve written claim upon the employer within two hundred days of the date of accident or date of last payment of compensation, whichever is later. Furnishing medical treatment is tantamount to payment of compensation. The untranscribed statement that claimant gave to the respondent's insurance adjuster in November, 1993 does not satisfy the requirement of a writing.

Claimant was initially authorized to seek medical treatment from orthopedic surgeon Robert L. Eyster, M.D. Dr. Eyster first saw claimant on November 17, 1993 and later released him from treatment, to return as needed, on December 16, 1993. Therefore, the time for serving written claim upon the respondent commenced December 16, 1993, the date of medical release. Claimant did not serve written claim on respondent until June 9, 1995, a date well beyond two hundred (200) days from the date medical treatment was last furnished.

Claimant contends written claim is timely pursuant to the principle set forth in the case of Blake v. Hutchinson Manufacturing Co., 213 Kan. 511, 516 P.2d 1008 (1973). The Appeals Board disagrees. The Blake case is distinguishable upon its facts because the injured worker was receiving ongoing medical treatment and had not been released from medical care. However, in the case now before us, claimant had been released from medical care as the treatment had run its course.

The analysis of the Administrative Law Judge is correct. Claimant has failed to serve timely written claim upon the respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes entered in this proceeding on August 25, 1995, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1995.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: Steven R. Wilson, Wichita, Kansas  
Kim R. Martens, Wichita, Kansas  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director